

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**LORIANN MONICA GONZALES,**

**Movant/Defendant,**

**v.**

**No. 12-cv-0816 JB/SMV  
08-cr-1537 JB**

**UNITED STATES OF AMERICA,**

**Respondent/Plaintiff.**

**MEMORANDUM OPINION AND ORDER TO SHOW CAUSE**

This matter is before the Court sua sponte under Rule 4(b) of the Rules Governing Section 2255 Cases, on Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [CV Doc. 1; CR Doc. 73]<sup>1</sup> ("§ 2255 Motion" or "Motion"), filed on July 25, 2012. On April 25, 2011, the Court entered judgment on Defendant's conviction and sentence. Sealed Judgment in a Criminal Case [CR Doc. 71] at 1. Defendant did not appeal her conviction or sentence. She then filed this § 2255 motion more than a year later. The Court will allow Defendant to show why her motion is not barred by the one-year limitation period in § 2255.

Defendant did not appeal her conviction or sentence, § 2255 Motion [CV Doc. 1; CR Doc. 73] at 2, and thus her conviction became final in early May, 2011, when the time for filing an appeal expired. *See United States v. Prows*, 448 F.3d 1223, 1227–28 (10th Cir. 2006); *and see United States v. Sandoval*, No. 09-2306, 371 F. App'x 945, 948 n.2, 2010 WL 1293341 (10th Cir. April 6, 2010) (unpublished) ("The 2009 Amendments to the Federal Rules of Appellate Procedure

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<sup>1</sup> References to the record in case number 12-cv-0816 are "CV Doc. #," and references to the record in case number 08-cr-1537 are "CR Doc. #."

extended the time to appeal a final judgment in a criminal case from ten to fourteen days. . . .”). More than fourteen months after the sentence became final, Defendant filed this § 2255 motion.

Defendant will be required to show cause why her § 2255 Motion should not be dismissed as untimely. The applicable one-year limitation period in § 2255 had expired when Defendant filed her § 2255 Motion, *see United States v. Willis*, 202 F.3d 1279, 1280 (10th Cir. 2000), and the Motion must be dismissed unless she establishes grounds for tolling, *see United States v. Cordova*, No. 99-1306, 1999 WL 1136759, at \*1 (10th Cir. Dec. 13, 1999) (unpublished). The Court raises the time bar to Defendant’s § 2255 motion sua sponte and will allow her an opportunity to respond to this order. *See Hare v. Ray*, No. 00-6143, 2000 WL 1335428, at \*1 (10th Cir. Sept. 15, 2000) (unpublished) (noting that timeliness of § 2254 petition was raised sua sponte and allowing response); *Hines v. United States*, 971 F.2d 506, 507–09 (10th Cir. 1992) (same for procedural default in § 2255 proceeding). Failure to respond to this order or otherwise show cause may result in dismissal of the § 2255 motion without further notice. *See* § 2255 R.4.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that, within thirty (30) days from entry of this order, Defendant shall file a response to this order showing cause, if any, why her § 2255 motion should not be dismissed as untimely.

**IT IS SO ORDERED.**

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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**